Independent Film & Television Alliance® (IFTA®) submission dated August 20, 2018 in response to Topic 6 with respect to Competition and Consumer Protection in the 21st Century Hearings, Project Number P181201.[1]

IFTA members are independent third-party suppliers of content to an extremely consolidated distribution market. In the U.S., these distributors are often the major MPAA studios.[2] Our sector continues to be disadvantaged as new mergers threaten to further limit the number of buyers (distributors) for different channels of distribution, lowering the value of the exploitation of the rights through extreme market power and undue leverage. For example, the future of Fox Searchlight, a significant buyer of independent content, is now in jeopardy as a result of the Disney/Fox transaction.

IFTA was active in opposing the Comcast/NBCU merger because Comcast made clear its intention to rely on NBCU content to fuel its own Xfinity video on demand service to the exclusion of independent suppliers and because the merger would accelerate the displacement of independent content on NBCU's own television and cable channels. As a condition on that transaction, IFTA negotiated an agreement with Comcast and NBCU to provide enhanced independent programming opportunities on NBCU's broadcast and cable networks, as well as Comcast Cable's VOD and online platforms.[3] However, those commitments now have expired and independents today generally must work through agents and aggregators (third parties who assemble limited, cherry-picked packages of content for online platforms and outlets), rather than being able to directly negotiate deals to reach Comcast's audiences, lessening the value of the license for the content producer.

The same concentration has occurred on the internet with platforms that stream on demand content like Google/YouTube, Facebook, Netflix and Amazon growing larger and at the same time narrowing opportunities for independent suppliers of content. Increasingly, these internet giants are pushing smaller suppliers and individual producers away from their platforms, clearing space for self-produced films and television series and for output deals with major suppliers. This year, Netflix is projected to spend close to $8 Billion on content and another $2 Billion on marketing[4], the bulk of which will go toward its budget for producing and promoting the platform's original programming.[5]

The economic forces so evident in traditional media will inevitably also push online platforms to prefer their own content, services and applications, discriminate against lawful, independent content, services and applications, and deprive the public of access to competing offerings. Consequently, the quantity, quality and diversity that should come from competition will be lost, along with the associated consumer benefits that flow from such diversity of choice

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[1] *See* 83 Fed. Reg. 38307 (August 6, 2018).

[2] Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

[3] https://docs.fcc.gov/public/attachments/FCC-11-4A1.pdf.

[4] https://www.netflixinvestor.com/ir-overview/long-term-view/default.aspx.

[5] https://techcrunch.com/2018/05/14/netflix-original-content-spending/.

in programming. In the case of Netflix, a recent study found that 80 percent of Netflix U.S. viewing is from licensed content.[6]

The revenues generated by streaming platforms are increasingly important as other forms of home entertainment (including traditional cable and satellite television) decline and potential streaming revenues now are a significant element in securing third-party production finance. Without confidence that independent programming can reach these online major platforms, and that revenues will not be undercut by competition from free (and illegal) copies, this important foundation for financing new independent content will not continue to develop. The internet must be governed in a fair and transparent manner worldwide so that we can continue to provide consumers alternative "on demand" ways to watch content.

IFTA urges the FTC to take notice of the global presence of these few major online platforms that offer a wide audience but also wield enormous power to push disfavored content and other online distributors to the side-lines. This is particularly troubling given that these platforms, notably Google/YouTube and Facebook, continue to profit from illegal content appearing on their systems and remain unwilling to adopt or make broadly available solutions to diminish accessibility of illegal content through their platforms.

[6] https://variety.com/2018/digital/news/netflix-licensed-content-majority-streaming-views-2017-study-1202751405/.